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15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA  
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19 BRIAN HOFER and JONATHAN HOFER,  
20 v.  
21 Plaintiffs,

22  
23 KYLE EMLEY, a Contra Costa County Deputy  
24 Sheriff, in his individual capacity, WILLIAM  
25 ODOM, a Contra Costa County Deputy Sheriff,  
26 in his individual capacity, BRANDON GANT,  
27 a Contra Costa County Deputy Sheriff, in his  
28 individual capacity, Defendant DOE 1, a  
Contra County Deputy Sheriff, in his individual  
capacity, COUNTY OF CONTRA COSTA, a  
municipal corporation, CITY OF SAN JOSE, a  
municipal corporation, VIGILANT  
SOLUTIONS, LLC, GETAROUND, INC., and  
Does 1 to 50,

Defendants.

Case No. 3:19-cv-02205-JSC

**AMENDED COMPLAINT AND JURY  
DEMAND**

Plaintiffs Brian Hofer and Jonathan Hofer file this Amended Complaint against Defendants based upon the following:

1. This is a civil rights case based on Defendants' violation of the Fourth Amendment's prohibition against unreasonable searches and seizures, and several state torts. Contra Costa County Sheriff's Deputies stopped, searched, detained, and arrested Plaintiffs without probable cause to

1 believe they committed a crime, and searched their vehicle and belongings without probable cause or  
2 a warrant. Other Defendants transmitted inaccurate information and/or failed to update that  
3 information, endangering Plaintiffs' lives, violating their civil rights, and causing them injuries.

4 **PARTIES**

5 2. Plaintiff BRIAN HOFER ("BRIAN") is and was at all times relevant to this action an  
6 individual residing in Oakland, California.

7 3. Plaintiff JONATHAN HOFER ("JONATHAN") is and was at all times relevant to this  
8 action an individual residing in Oakland, California.

9 4. Defendant KYLE EMLEY ("EMLEY") was at all times relevant to this action a  
10 Deputy Sheriff for Contra Costa County acting within the course and scope of his employment and  
11 under color of state law.

12 5. Defendant BRANDON GANT ("GANT") was at all times relevant to this action a  
13 Deputy Sheriff for Contra Costa County acting within the course and scope of his employment and  
14 under color of state law.

15 6. Defendant WILLIAM ODOM ("ODOM") was at all times relevant to this action a  
16 Deputy Sheriff for Contra Costa County acting within the course and scope of his employment and  
17 under color of state law.

18 7. Defendant DOE 1 is sued herein under a fictitious name. His true name is unknown to  
19 Plaintiffs. When his true name is ascertained, Plaintiffs will seek leave of Court to amend this  
20 Complaint by adding DOE 1's real name. DOE 1 was at all times relevant to this action a Deputy  
21 Sheriff for Contra Costa County acting within the course and scope of his employment and under  
22 color of state law.

23 8. Defendant COUNTY OF CONTRA COSTA ("CONTRA COSTA"), California, is and  
24 was a municipal corporation at all times relevant to this action. CONTRA COSTA owns, operates,  
25 manages, directs, and controls the Contra Costa County Sheriff's Office, and at all times relevant to  
26 this action employed EMLEY, GANT, ODOM, and DOE 1. Throughout the incident that is the  
27 subject of this Complaint, EMLEY, GANT, ODOM, and DOE 1 followed CONTRA COSTA's  
28 policies and practices.

1       9.     Defendant CITY OF SAN JOSE (“SAN JOSE”), California is and was at all times  
 2 relevant to this action a municipal corporation. SAN JOSE established its police department through  
 3 § 807 of the City Charter and has delegated police powers to the chief of police, who is responsible for  
 4 administering the operation of the police department, through its Municipal Code § 2.04.4020.

5       10.    Defendant VIGILANT SOLUTIONS, LLC (“VIGILANT”) is a maker of automated  
 6 license plate readers (“ALPR”). The CONTRA COSTA Sheriff’s department used VIGILANT’s  
 7 ALPR at all times relevant to this action.

8       11.    Defendant GETAROUND, INC. (“GETAROUND”) is a car sharing platform, whereby  
 9 private vehicle owners rent their vehicles to other private parties. GETAROUND also provides its  
 10 own vehicles to the platform for rental by private parties. The car BRIAN rented at the time of the  
 11 events in this Complaint was owned by GETAROUND.

12      12.    Defendant DOES 2-50 are actors who participated in the constitutional violations  
 13 and/or torts alleged in this Complaint. When their true names are ascertained, Plaintiffs will seek leave  
 14 of Court to add those DOES to the Complaint by their real names.

#### **JURISDICTION AND VENUE**

16      13.    Jurisdiction is founded upon 28 U.S.C. §§ 1331 and 1343(a)(3) and (4) because it is  
 17 brought to obtain compensatory and punitive damages for the deprivation, under color of state law, of  
 18 the rights of citizens of the United States that are secured by the United States Constitution, pursuant  
 19 to 42 U.S.C. §§ 1983 and 1988. Plaintiffs bring this action for violation of the Fourth Amendment to  
 20 the United States Constitution. The Court also has supplemental jurisdiction pursuant to 28 U.S.C.  
 21 § 1337 to hear and decide claims arising under state law.

22      14.    **Intradistrict Assignment:** A substantial part of the acts and omissions in this  
 23 Complaint occurred in the County of Contra Costa, California. Pursuant to Civil L.R. 3-2(d) this case  
 24 is properly assigned to the Oakland or San Francisco Division of the Court.

#### **FACTS**

26      15.    On November 21, 2018, BRIAN rented a car from GETAROUND so that he and his  
 27 brother JONATHAN could travel north to visit family for the Thanksgiving holiday. They rented the  
 28 car without incident.

1       16. On November 25, 2018, BRIAN and JONATHAN were returning to Oakland from the  
2 holiday in the GETAROUND car, driving west on I-80 near San Pablo, California. At approximately  
3 6:50 p.m., they were stopped by a Contra Costa Sheriff's deputy, later identified as GANT. After  
4 tailing them for a period of time, GANT turned on his overhead lights and directed BRIAN over the  
5 loudspeaker to exit the freeway. BRIAN was neither exceeding the speed limit nor violating any other  
6 laws.

7       17. BRIAN complied and exited I-80 by taking the San Pablo Dam Road off-ramp, and he  
8 pulled into a well-lit shopping center parking lot near Ross Dress for Less and Jack in the Box.  
9 BRIAN put the car into park, turned off the engine, and turned on the inside dome light so that the  
10 officer could easily see inside the car.

11       18. At this time, two additional Sheriff vehicles surrounded BRIAN and JONATHAN's  
12 vehicle. The drivers of the other two police vehicles were later identified as EMLEY and ODOM.

13       19. Next, GANT told BRIAN that "you probably have some idea what is going on," but  
14 made no attempt to explain why he pulled them over. BRIAN stated to GANT that he did not have  
15 any idea what was going on, and BRIAN requested that GANT check their identification and discuss  
16 the matter with them. GANT did not do so.

17       20. GANT next directed BRIAN to remove the car key from the ignition and place it on  
18 the roof of the vehicle, which BRIAN did.

19       21. GANT next directed BRIAN to place both hands outside the driver's window, which  
20 BRIAN did.

21       22. GANT next directed JONATHAN to place both hands outside the passenger window.  
22 BRIAN informed GANT that this was impossible, as the power window was rolled up, and without  
23 the key to turn on the engine, the window could not be opened. GANT acknowledged this.

24       23. GANT next directed BRIAN to open his driver side door, place his hands behind his  
25 head, and walk backwards towards the sound of GANT's voice. This was when BRIAN noticed  
26 GANT was pointing his gun at him, as was EMLEY.

1       24.     BRIAN complied with GANT's directions. As BRIAN reached GANT, GANT  
2 grabbed BRIAN's hands and handcuffed them behind his back. GANT made no attempt to check  
3 BRIAN's identification, or ask any questions about the car, BRIAN or JONATHAN.

4       25.     GANT placed BRIAN in the back of GANT's vehicle.

5       26.     EMLEY and GANT next directed JONATHAN to exit the passenger side door in a  
6 similar manner as BRIAN. From the back of GANT's vehicle, BRIAN saw that deputies GANT,  
7 EMLEY, and ODOM all had their guns drawn and pointed at JONATHAN.

8       27.     JONATHAN complied with the officers' directions, walking backwards slowly and  
9 non-threateningly towards EMLEY.

10      28.     For no apparent reason, EMLEY started screaming at JONATHAN and pushed  
11 JONATHAN to his knees, facing away from EMLEY. In full view of BRIAN, EMLEY pointed his  
12 gun to the back of JONATHAN's head, execution-style. BRIAN was terrified that if he yelled,  
13 EMLEY would shoot JONATHAN in the head, so he stayed quiet and still in GANT's car. EMLEY  
14 next slammed JONATHAN forward to the ground, injuring JONATHAN.

15      29.     EMLEY then handcuffed JONATHAN behind his back, and placed JONATHAN in  
16 the back of EMLEY's vehicle.

17      30.     GANT, ODOM, and EMLEY made no attempt to identify BRIAN or JONATHAN, or  
18 to communicate any information about why they were brutally apprehending BRIAN and  
19 JONATHAN.

20      31.     As BRIAN sat in the back of GANT's vehicle, he noticed a VIGILANT screen on  
21 GANT's police computer. As a surveillance reform activist and Chair of the City of Oakland's  
22 Privacy Commission, BRIAN is familiar with VIGILANT and its ALPR systems.

23      32.     The three officers next searched BRIAN's rental vehicle, opening all doors and the  
24 closed trunk. GANT unzipped the suitcases in the trunk and examined the contents of the luggage,  
25 which contained clothing.

26      33.     The officers did not have a warrant to search the vehicle and its contents and at no time  
27 did BRIAN or JONATHAN consent to those searches. The officers also did not have a warrant to  
28 search or arrest BRIAN or JONATHAN.

1       34. GANT finally asked BRIAN for his identification. Still handcuffed, BRIAN directed  
2 GANT to his front pocket and GANT removed BRIAN's wallet containing his driver's license.  
3 GANT presumably called dispatch using his radio to check BRIAN's identification.

4       35. EMLEY did the same to JONATHAN, also still handcuffed, removing JONATHAN'S  
5 identification and using his radio to inquire.

6       36. GANT next walked over to BRIAN and finally stated that the ALPR registered the  
7 car's license plate as a "hit" against a stolen vehicle "hot list." BRIAN and JONATHAN do not know  
8 if a "hot list" existed or, if it did, whether the vehicle BRIAN rented actually appeared on it.

9       37. BRIAN explained that he had rented the car from GETAROUND, which presumably  
10 would not have rented him a stolen vehicle. GANT asked BRIAN for the rental paperwork, and  
11 BRIAN told GANT that he booked the rental through an application on his smartphone, which was  
12 still in the vehicle.

13       38. GANT fetched the phone and walked over to BRIAN, demanding the passcode.  
14 BRIAN refused to provide GANT the code and asked to enter it himself. GANT denied this request  
15 and said BRIAN had "no choice" but to provide him the passcode. BRIAN did not know if this meant  
16 GANT would shoot him if he refused, beat him, take him to the police station, or take some other  
17 unlawful action in addition to demanding the passcode to his phone, which had stored on it a digital  
18 record of nearly every aspect of BRIAN's life. BRIAN reluctantly gave GANT the code.

19       39. Neither GANT nor the other officers on the scene had a warrant to search BRIAN's  
20 phone.

21       40. GANT opened the phone's screen, and BRIAN directed him to the GETAROUND  
22 application. Upon opening, the application showed an active car rental. GANT walked away with  
23 BRIAN's unlocked phone to talk to the other officers.

24       41. GANT then called GETAROUND. GETAROUND confirmed to GANT that BRIAN  
25 had rented the car as he claimed.

26       42. GANT next removed BRIAN from the vehicle and took off the handcuffs. EMLEY did  
27 the same for JONATHAN. By this time, BRIAN and JONATHAN had been in police custody for  
28 approximately forty minutes.

43. ODOM told BRIAN that he “told the others the “hit” made no sense.”

44. GANT informed BRIAN that they could not yet leave, as he was waiting on his supervisor, DOE 1, to bring some paperwork. DOE 1 arrived but did not speak to BRIAN or JONATHAN.

45. DOE 1 handed GANT a single sheet of mostly blank paper, and GANT asked BRIAN to sign it, stating that by signing it, BRIAN was acknowledging that he had been detained for longer than 15 minutes. BRIAN signed it. No such paperwork was presented to JONATHAN.

46. GANT, ODOM, EMLEY, and DOE 1 each either used forced against BRIAN and JONATHAN and/or, as armed back up, were integral participants in the use of force.

47. At no time did GANT, ODOM, EMLEY, or DOE 1 intervene or attempt to intervene to stop the other officers' excessive use of force or illegal searches.

48. BRIAN and JONATHAN left the scene, and returned the vehicle to the GETAROUND lot in Oakland, near where they lived.

49. BRIAN and JONATHAN timely and properly filed government code claims against CONTRA COSTA and SAN JOSE pursuant to California Government Code § 910 *et seq*, and this action is timely filed within all applicable statutes of limitation.

50. Communications and reporting among Defendants CONTRA COSTA, GANT, EMLEY, ODOM, SAN JOSE, GETAROUND, VIGILANT, and the DOES regarding the car BRIAN rented are within the exclusive control of those Defendants. Although some of those Defendants have provided BRIAN and JONATHAN limited information, BRIAN and JONATHAN do not, at this time, have any idea about the accuracy or completeness of that information.

## *County of Contra Costa*

51. The Contra Costa County Sheriff acts as the final policymaker for CONTRA COSTA with respect to the policies and practices of Deputy Sheriffs.

52. The Contra Costa County Sheriff made a public statement about the incident with BRIAN and JONATHAN on November 25, 2018, including: "The Deputy Sheriffs involved in this case followed procedure and acted appropriately."

53. GANT, EMLEY, ODOM, and DOE 1's actions with BRIAN and JONATHAN were consistent with and pursuant to the policies, practices, and customs of CONTRA COSTA.

## *City of San Jose*

4       54. The SAN JOSE police report relating to the vehicle BRIAN was driving on November  
5 25, 2018 indicates that on October 20, 2018, an unnamed driver had temporarily stepped away from  
6 the vehicle while it was running, and when they returned, it had been stolen. The driver contacted the  
7 SAN JOSE police department to report the theft. The SAN JOSE police department placed the vehicle  
8 on a list of stolen vehicles, such that an alert was apparently send to police agencies and ALPR  
9 vendors like VIGILANT. Nothing in the report suggested that a carjacking or act of violence had  
10 occurred.

11       55. After the vehicle was recovered, the SAN JOSE police department apparently received  
12 some information provided on behalf of GETAROUND by text and telephone from someone  
13 requesting an incident report number that the car was either not, in fact, stolen or had been returned.

14       56. The SAN JOSE police department failed to remove the car from the list of stolen  
15 vehicles notwithstanding the information it received, such that the car BRIAN rented remained in  
16 VIGILANT's database until at least November 25, 2018, when BRIAN and JONATHAN were pulled  
17 over.

Getaround

19       57. After the vehicle was recovered in San Jose by the unnamed driver and placed back  
20 into their platform to be rented again, GETAROUND failed to notify SAN JOSE's police department  
21 of the recovery, or failed to notify the department in a way that was likely to cause the department to  
22 accurately document that it was not stolen.

23        58. GETAROUND did not notify SAN JOSE's police department of the recovery in  
24 writing, speak to the officer in charge of the investigation, or send someone to the police station to  
25 obtain confirmation that the car was no longer considered stolen. GETAROUND's failure to take such  
26 reasonable steps endangered the lives of all future renters of that vehicle.

27        59.      GETAROUND's failure to notify SAN JOSE's police department of the car's  
28 recovery, or failure to notify the department in a meaningful way, resulted in the vehicle remaining in

VIGILANT's ALPR system until at least November 25, when BRIAN and JONATHAN were pulled over.

3       60.     GETAROUND breached its contract with BRIAN and harmed BRIAN and  
4 JONATHAN by renting BRIAN a reportedly stolen vehicle. GETAROUND also breached its duty to  
5 renters of its vehicles and their passengers to update information it provides to police agencies  
6 regarding the status of its vehicles that were reported stolen.

## *Vigilant*

8        61. VIGILANT provides ALPR services to both private customers and public agencies,  
9 including police agencies. As manufacturer of the equipment and host of the data, VIGILANT has a  
10 duty to ensure the accuracy of the information within its ALPR system, especially when used by  
11 police interacting with members of the public.

12        62.      BRIAN and JONATHAN allege, in the alternative to ¶¶ 55-59 and consistent with  
13 ¶ 50, above, that the SAN JOSE police department reported that the car BRIAN rented was actually  
14 not stolen or had been recovered in a manner that notified VIGILANT that the car should not be on its  
15 stolen vehicle list.

16       63. After the vehicle was recovered and VIGILANT was so informed, VIGILANT failed  
17 to update its list of stolen vehicles, such that the vehicle remained in VIGILANT's ALPR system until  
18 at least November 25, 2018, when BRIAN and JONATHAN were pulled over and brutalized.

### *Damages*

20           64. BRIAN and JONATHAN suffered a deprivation of their liberty as a result of their  
21 detention and arrest by CONTRA COSTA deputies.

22       65.     BRIAN also suffered a deprivation of his right to be free from unreasonable searches  
23 when Contra Costa deputies searched his person, vehicle, trunk, luggage, and mobile phone.  
24 JONATHAN suffered a deprivation of his right to be free from unreasonable searches when  
25 CONTRA COSTA deputies searched his person and luggage.

26       66.     BRIAN and JONATHAN suffered severe emotional distress from having guns pointed  
27 at them, being handcuffed and detained, and otherwise being subjected to excessive force and treated  
28 like violent criminals.

67. JONATHAN suffered bruises from being thrown to the ground and an injury to his hand that may require surgery.

68. BRIAN suffered acute emotional trauma from witnessing EMLEY pointing his gun at the back of JONATHAN's head while he was on his knees and posed absolutely no threat to EMLEY.

**COUNT ONE: 42 U.S.C. § 1983 (FOURTH AMENDMENT)  
AGAINST CONTRA COSTA COUNTY**

69. Pursuant to the foregoing, the actions of the Deputy Sheriff Defendants were consistent with and pursuant to the policies, practices, and customs of CONTRA COSTA.

70. Those County policies, practices, and customs through which the Deputy Sheriff Defendants violated BRIAN and JONATHAN's Fourth Amendment rights were the moving force behind the harm done to BRIAN and JONATHAN.

71. CONTRA COSTA also ratified the actions of the Deputy Sheriff Defendants.

72. CONTRA COSTA is liable for BRIAN and JONATHAN's damages under the doctrine of municipal liability.

**COUNT TWO: 42 U.S.C. § 1983 (FOURTH AMENDMENT)  
AGAINST GANT, ODOM, EMLEY, and DOE 1**

73. Pursuant to the foregoing, Defendants violated Plaintiff's rights under the Fourth Amendment to the United States Constitution to be free from unreasonable searches and seizures.

74. Defendants stopped, detained, and arrested BRIAN and JONATHAN without a warrant and without probable cause.

75. Defendants further conducted a warrantless search of BRIAN and JONATHAN's trunk and suitcases and coerced BRIAN to provide the password to his phone.

76. Throughout the ordeal, Defendants' used excessive force against BRIAN and JONATHAN.

77. Defendants' Fourth Amendment violations caused BRIAN and JONATHAN damages for which they are entitled to recovery.

**COUNT THREE: BANE ACT  
AGAINST CONTRA COSTA, GANT, ODOM, EMLEY, and DOE 1**

78. As set forth above, Defendants, acting alone or in concert, intentionally interfered with, or attempted to interfere with, BRIAN and JONATHAN's civil rights by threats, intimidation, or coercion.

79. Defendants made threats of violence and committed acts of violence against BRIAN and JONATHAN, causing them physical and emotional injuries.

80. Defendants also interfered with, attempted to interfere with, and violated BRIAN and JONATHAN's rights as follows:

- a. The Fourth Amendment right to protection from the use of excessive force and unreasonable searches at the hands of police officers;
- b. The right to be free from the use of excessive force and unreasonable searches as secured by the California Constitution, Article 1, Section 13;
- c. The right to privacy secured by the California Constitution Article 1, Section 1;
- d. The right to protection from bodily restraint, harm, or personal insult, as secured by California Civil Code § 43.

81. The threats, intimidation, and coercion described in this complaint were not necessary or inherent to Defendants' violation of BRIAN and JONATHAN's rights, or to any legitimate police activity.

82. Further, in the alternative or concurrently, Defendants' violations of duties and rights and coercive conduct were volitional acts; not accidental or merely negligent.

83. As a direct and proximate result of Defendants' violation of California Civil Code § 52.1 and of BRIAN and JONATHAN's rights under the United States and California's Constitution and law, they sustained injuries and damages for which they are entitled to compensation.

**COUNT FOUR: ASSAULT & BATTERY  
AGAINST CONTRA COSTA, GANT, ODOM, EMLEY**

84. As set forth above, Defendants committed Assault and Battery against BRIAN and JONATHAN.

85. Defendants wrongful acts were a direct and proximate cause of BRIAN and JONATHAN's injuries and damages, for which they are entitled to compensation.

**COUNT FIVE: FALSE IMPRISONMENT  
AGAINST CONTRA COSTA, GANT, ODOM, EMLEY**

86. As set forth above, Defendants committed False Imprisonment against BRIAN and JONATHAN.

87. Defendants wrongful acts were a direct and proximate cause of BRIAN and JONATHAN's injuries and damages, for which they are entitled to compensation.

## **COUNT SIX: INTENTIONAL INFILCTION OF EMOTIONAL DISTRESS AGAINST CONTRA COSTA, GANT, ODOM, EMLEY**

88. As set forth above, Defendants committed Intentional Infliction of Emotional Distress against BRIAN and JONATHAN.

89. Defendants wrongful acts were a direct and proximate cause of BRIAN and JONATHAN's injuries and damages, for which they are entitled to compensation.

**COUNT SEVEN: NEGLIGENCE  
AGAINST CONTRA COSTA, GANT, ODOM, EMLEY, DOE 1, SAN JOSE, VIGILANT,  
GETAROUND, and DOES 2-50**

90. In the alternative to the intentional conduct alleged above against CONTRA COSTA, GANT, ODOM, EMLEY, DOE 1, those Defendants negligently breached their duty of care when conducting the traffic stop of BRIAN and JONATHAN.

91. Pursuant to the foregoing, SAN JOSE negligently breached its duty to maintain accurate records of stolen vehicles, which records are transmitted to police agencies throughout California and the rest of the United States.

92. Pursuant to the foregoing, GETAROUND breached its duty to update the SAN JOSE police department that the car it rented to BRIAN and JONATHAN was not stolen or had been returned

93. Pursuant to the foregoing, VIGILANT breached its duty to maintain accurate records of stolen vehicles, which records are transmitted to and relied upon by police agencies throughout California and the rest of the United States through its ALPR system.

94. Defendants' negligent acts were a direct and proximate cause of BRIAN and JONATHAN's injuries and damages, for which they are entitled to compensation.

WHEREFORE, Plaintiffs BRIAN HOFER and JONATHAN HOFER demand trial by jury and judgment in their favor as follows:

- a. Compensatory damages in an amount to be proven at trial;
- b. Punitive damages;
- c. Costs of suit;
- d. Attorney's fees as provided by law; and
- e. Such other and further relief in favor of Plaintiffs as is just and proper.

Respectfully submitted,

/s/ Glenn Katon  
Glenn Katon

**ATTORNEY FOR PLAINTIFFS**